
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

KENNETH BUHOLTZ, #18875-078

versus

UNITED STATES OF AMERICA

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CIVIL ACTION NO. 4:15-CV-703

CRIMINAL ACTION NO. 4:11-CR-135(1)

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation (#29) concluding that the Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody filed pursuant to 28 U.S.C. § 2255 should be denied and dismissed with prejudice. Movant filed objections (#36).

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Movant to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct, and the objections of Movant are without merit.

In Movant's objections, he reurges the issues he raised originally, and for the first time, raises a claim of newly discovered evidence that he claims would make a difference to his case. Specifically, Movant provides a purported handwriting expert's analysis on the handwriting found in the victim's diary, asserting portions of the diary were forged. The Court notes that the diary was discussed in Movant's Presentence Investigation Report; thus, any evidence concerning the diary cannot be considered new evidence at this point. Moreover, Movant pleaded guilty to the charge. He pleaded guilty pursuant to a Fed. R. Crim. P. 11(c)(1)(C) agreement, agreeing to a prison term of one hundred twenty months, which was the statutory mandatory minimum. Finally,

claims raised for the first time in a reply or objections need not be considered by a court. *See United States v. Cervantes*, 132 F.3d 1106, 1111 (5th Cir. 1998) (district court does not abuse its discretion in refusing to consider new issues filed without leave of the court after the Government files its Response).

It is accordingly **ORDERED** that Movant's Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (#1) pursuant to 28 U.S.C. § 2255 is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions by either party not previously ruled upon are **DENIED**.

SIGNED at Beaumont, Texas, this 26th day of March, 2019.

A handwritten signature in black ink, reading "Marcia A. Crone", is positioned above a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE